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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/788,177	02/16/2001	John David Tucker	KCC-16,190	5302

35844 7590 11/22/2004

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EXAMINER

COLE, ELIZABETH M

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 11/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/788,177	TUCKER ET AL.	
	Examiner	Art Unit	
	Elizabeth M. Cole	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21, 23-25, 27-45 and 47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21, 23-25, 27-45, 47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1-2, 4-6, 32-, 35-37, 41-43, 45, 47 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 99/14047 to Haffner et al. Haffner discloses a multilayer film which is stretch thinned, (see p. 5, line 3), wherein the intermediate layer comprises an ethylene polymer or copolymer such as a those made by a single site catalyst, (page 12, line 20-33), which may further comprise up to about 50% by weight of additional polymers which would correspond to the claimed incompatible polymer, including polyolefins, such as polyethylene, linear low density polyethylene and polypropylene (page 13, line 31 – page 14, line 22), and 45-65 % by weight of a filler such as calcium carbonate, (page 15, lines 1-2). The stretch-thinned material may be incorporated into absorbent articles and combined with fabric layers such as spunbond and meltblown layers. See page 15, lines 11-25.

2. Claims 1-2, 4-13, 16-21, 23-25, 27-33, 35-45, 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al, EP 1,070,736 in view of Stopper et al, WO 98/44025 for the reasons set forth in paragraph 4 of the previous office action, and further in view of Haffner et al, WO 99/24047. Lee does not disclose employing a single-site catalyzed polyethylene as the matrix polymer. Haffner discloses that single-site catalyzed ethylene polymers may be used as the matrix material in forming breathable laminates which comprise both film layers and fabric layers. See page 12, line 20-33. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed a single-site catalyzed polyethylene as taught by Haffner. One of ordinary skill in the art would have been motivated to use a single-site

catalyzed polymer because Haffner teaches that these materials are particularly suitable for use to form breathable, stretch-thinned films and laminates.

3. Claims 3, 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee in view of Stopper and Haffner as applied to claims above, and further in view of Burns, Jr. et al, U.S. Patent No. 6,32,723 for the reasons set forth in paragraph 5 of the previous office action.

Information Disclosure Statement

4. With regard to the information disclosure statements discussed at page 8 of the response, an IDS filed 12 May 2004 is attached to this action. However, although the contents of the file were reviewed, no IDS filed June 2001 was found in the file.

5. Applicant's arguments filed 9/13/04 have been fully considered but they are not persuasive. Applicant argues that Lee and Stopper do not disclose the claimed single-site catalyzed polymer. That argument is now moot in view of the new grounds of rejection. Similarly, the arguments regarding JP 10-245042 are moot in view of the new grounds of rejection.

With regard to the argument that Lee and Stopper do not teach employing laminate waste material, the claims are not specific as to what constitutes laminate waste material. A laminate waste material could be a type-pure material and not contain other components, fillers, impurities, etc. Therefore, the argument that the laminate waste material would comprise more than the polypropylene is not persuasive.

With regard to the argument that Stopper does not disclose the claimed incompatibility between the matrix and the additional polymer, since Stopper teaches

the same materials they would necessarily have to have the same properties. The instant specification discloses suitable polymers for the incompatible polymer and Stopper discloses the same materials. Therefore, this grounds of rejection is maintained.

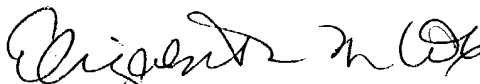
With regard to Burns, Burns discloses a list of materials which are suitable for use in forming breathable filled films. The materials disclosed by Burns include those disclosed in Stopper as well as including additional suitable materials such as u-LDPE. Therefore, one of ordinary skill in the art would have recognized that the both the materials disclosed in Stopper and the materials disclosed in Burns are suitable for use in making breathable, filled films and that the two groups of materials were recognized in the art as equivalents which are suitable for the same purpose.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (571) 272-1478.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (703) 872-9306.


Elizabeth M. Cole

ELIZABETH M. COLE
PRIMARY EXAMINER